

## Instructions for Filing Probate and Guardianship Proceedings, Related Matters, and Ancillary Proceedings

The purpose of these instructions is to describe which actions should be filed in a principal probate or guardianship file and which other actions are ancillary and should be placed in a new file. While any stage of a probate or guardianship proceeding can be contested, it is usually the contested matters *that bear no direct relationship to the administration of the estate* that are “ancillary” and must be given a new cause number. (To ensure the new case is linked to the principal file, follow the instructions on the following pages on “how to style an ancillary case.” The new Probate Court Cover Sheet will also help.) By way of illustration and not definition, the following lists are examples of matters that belong in the principal file and examples of matters that belong in an ancillary file:

**A. Core matters that belong in the principal file (“base case”).** Matters that are principally concerned with the administration of the estate are “core” matters and should be filed under the main cause number. Examples include:

1. Appointment of guardian; probate of will; determination of heirship (with or without request for administration)  
After the death of a ward, any probate proceedings must be filed in a new cause and cannot be filed in the guardianship case, whether the ward died testate or intestate.
2. **Contest to will, heirship, administration, or guardianship (before or after grant of letters)**
3. **Contest or objection to actions during administration (sales, fees, accountings, etc.)**
4. **Declaratory Judgments to construe/interpret provisions of a will *before* the will is admitted to probate**  
In a Muniment of Title proceeding, the following actions *must* be filed as part of the base case and heard contemporaneously with the admission of the will to probate: A Declaratory Judgment to construe who the distributees under the will are, and any Heirship Determination to resolve a partial intestacy under the will.
5. An action to construe and interpret provisions of a Testamentary Trust *before* the will has been admitted to probate
6. All claims pursuant to claims-presentation process
7. Removal of personal representative
8. § 5B/§ 608 motions to transfer an ancillary case (but if the transfer comes in, it will go in an ancillary-case file)
9. Release of the Independent Executor pursuant to 149E (declaratory judgment)

Any of the proceedings described as belonging in the “base case” may be severed as an ancillary proceeding at the court’s discretion. This severance would be appropriate for proceedings that are potentially voluminous, for example.

**B. Ancillary matters that belong in a different file with a new cause number (“ancillary case”).**

Contested matters that bear no direct relationship to the administration of the probate estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.) should be filed in a new cause number. Examples include:

1. **Declaratory Judgments to construe/interpret provisions of a will *after* the will is admitted to probate**
2. An action to construe and interpret provisions of a Testamentary Trust *after* the will has been admitted to probate
3. Any action involving a Testamentary Trust *other than* construction issues (e.g. removal of a trustee)
4. Intervivos Trust Action (settler is decedent in probate pending in subject court)
5. All applications to establish a court-created trust (under § 867 or otherwise) must be filed in a new cause number, whether or not the trust is related to a base case.
6. Foreclosure of preferred debt and lien
7. Actions for the trial of title to land and enforcement of liens thereon
8. Actions for the trial of right to property
9. Interpleader actions (funds tendered into registry during administration)
10. Divorces, child custody, paternity actions
11. Claims such as personal injury claims or suits on a claim that was rejected in its entirety or in part
12. In addition, a Bill of Review should be filed in an ancillary cause number (even though it has a direct relationship to the administration)

## Captions for Ancillary or Related Cases

**Please pay special attention to your pleadings when you have an ancillary or related case.** (See instructions on the previous page regarding which actions are ancillary and need to be placed in a new file with a new cause number.)

- a. When you have an ancillary or related case, you will get a new cause number.
- b. ***Be sure the style accurately identifies the parties in the ancillary action.*** Remember that an estate cannot be a party; a decedent's estate "is not a legal entity and may not properly sue or be sued as such." *Price v. Estate of Anderson*, 522 S.W.3d 690, 691 (Tex. 1975). It's the executor or administrator who has the capacity to sue or be sued.
- c. Because ancillary cases in Travis County Probate Court No. 1 are no longer identified by an "A," "B," etc., at the end of the base-case cause number, the Court's rules now require that you refer to the base-case style and cause number at the end of the ancillary-case caption. See the template below and the examples on the next page. This reference enables the County Clerk, Court staff, lawyers, and others to easily link the ancillary case with the principal case file.
- d. ***Once an ancillary case is opened, please think before you file a pleading.*** Does the pleading belong in the base case or the ancillary case? If there are multiple ancillary cases, which one does the pleading belong in? Once you've got that figured out, use the correct cause number and the correct caption! That request sounds obvious, but it's amazing how many times the Law Clerk has to sort through mixed-up files and prepare an Order Clarifying the Docket.

### Sample template for an ancillary-case caption:

*According to Local Rule 1.4, "[t]he style on all ancillary matters shall include the names of the party bringing the action and the opposing party . . . ."*

*Pleadings should be filed using a **new, ancillary** cause number.*

**Cause No. C-1-PB-10-000067**

**Party**

**vs.**

**Opposing Party**

[In the Estate of \_\_\_\_\_, Deceased,  
Cause No. C-1-PB-09-000123]

§  
§  
§  
§  
§  
§  
§  
§

**In the Probate Court No. 1**

**of**

**Travis County, Texas**

*Include a bracketed reference to the style and cause number of the base case (or other related case), **preferably in smaller type** than for the style of the ancillary matter itself. (Note that **all** cause numbers now begin with "C-1-PB, etc., so make sure you don't use the old 5-digit cause number for the base case.)*

## Captions for Ancillary or Related Cases

### Example (slightly modified from the original)

*If it's somebody versus somebody – the style of the case needs to indicate the parties!*

#### **Cause No. C-1-PB-08-011659**

<b>Lester J. Ducote, Independent Administrator of</b>	§	<b>In the Probate Court No. 1</b>
<b>the Estate of Audrey Ellen Ducote; Lester Ducote</b>	§	
<b>and Ellen Ducote Individually,</b>	§	
<b>Plaintiffs</b>	§	
<b>vs.</b>	§	<b>of</b>
<b>Ford Motor Company and Tammy Goodman,</b>	§	
<b>Defendants</b>	§	
[In the Estate of Audrey Ellen Ducote, Deceased,	§	<b>Travis County, Texas</b>
Cause No. C-1-PB-08-088732]	§	

### Example from a case of what *should* have been done as soon as the trust was established:

#### **Cause No. C-1-PB-10-000251**

<b>In re. § 867 Management Trust</b>	§	<b>In the Probate Court No. 1</b>
<b>for the benefit of</b>	§	
<b>Stephen Jacob Schirmer,</b>	§	<b>of</b>
<b>A Minor</b>	§	
[Cause No. C-1-PB-03-79206, <i>Estate of Matthew William</i>	§	<b>Travis County, Texas</b>
<i>Schirmer, Deceased</i> ]	§	

### Example when there was a declaratory judgment after the will was probated:

#### **Cause No. C-1-PB-13-\_\_\_\_\_**

<b>Declaratory Judgment</b>	§	<b>In the Probate Court No. 1</b>
<b>in the Estate of</b>	§	
<b>Janet R. Tarbell, Deceased</b>	§	<b>of</b>
	§	
	§	
	§	
[Cause No. C-1-PB-10-001884, <i>Estate of Janet R. Tarbell,</i>	§	<b>Travis County, Texas</b>
<i>Deceased</i> ]	§	